

A³ 24. (added) A plant heterozygous for resistance to a herbicide which after being sprayed with said herbicide produces viable pollen which is herbicide resistant.

REMARKS

The application has been amended to correct minor informalities, and to more particularly point out and distinctly claim the subject matter which Applicant regards as the invention so as to place the application, as a whole, into a prima facie condition for allowance. Great care has been taken to avoid the introduction of new subject matter into the application as a result of the foregoing modifications.

The Examiner has required that the application be restricted to one of the three groups identified. In response, Applicant elects Claims 1-11 and new Claims 21-24 in Group I with traverse. The Applicant respectfully disagrees with the statement the inventions claimed in Groups I, II, and III are unrelated.

To support the restriction requirement, the Examiner asserts that Inventions I, II, and III are unrelated and characterizes the unrelatedness as incapable of use together, or having different functionality, or causing different effects. In traversing the assertion of unrelatedness, Applicant directs the attention of the Examiner to Claims 12 and 13. The invention claimed in Claims 12 and 13 does not satisfy the elements required by MPEP § 806.04 and/or MPEP § 808.01. A situation that arises under § 808.01 is "rarely presented, since persons will seldom file an application containing disclosures of independent things." MPEP § 808.01. Such is the case in the instant application.

The invention of Group I is related to that claimed in Claims 12 and 13. The method described in Group I is directed to a process by which pollen from herbicide-

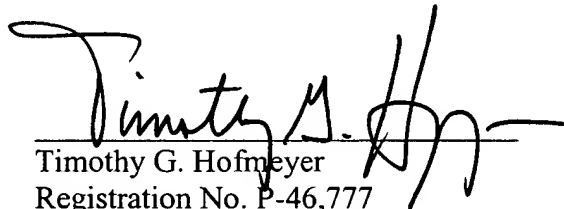
resistant plants fertilizes plants to achieve progeny that also exhibits herbicide resistance. As such, Group I should include Claims 12 and 13, as well as the claims added by the foregoing amendment. Applicant will consider amending Claim 1 to further define the characteristics of the pollen should the Examiner so require.

Based on the foregoing, Applicant respectfully submits that claims 1-11 and 21-24, as amended, are in condition for allowance at this time, patentably distinguishing over the prior art. Accordingly, reconsideration of the application and passage to allowance are respectfully solicited.

The Examiner is respectfully urged to call the undersigned attorney at (515) 288-2500 to discuss the claims in an effort to reach a mutual agreement with respect to claim limitations in the present application which will be effective to define the patentable subject matter if the present claims are not deemed to be adequate for this purpose.

Respectfully submitted,

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